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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 RONARD LORA and HUGO RIVERA,
5 individually and on behalf of
6 all others similarly situated,

7 Plaintiffs,

8 v.

9 11-CV-9010 (LLS)

10 J.V. CAR WASH, LTD., BROADWAY
11 HAND CARWASH CORP., WEBSTER
12 HAND CAR WASH CORP., HARLEM
13 HAND CAR WASH INC., BAYWAY
14 HAND CAR WASH CORP., JOSE
15 VAZQUEZ, SATURNINO VARGAS,
16 JOSE JIMENEZ, RAMON PEREZ,
17 DOMINGO "DOE," ADOLFO "DOE"
18 and JOHN DOES 1-10,

19 Defendants.

20 Conference

21 -----x
22 New York, N.Y.
23 March 17, 2014
24 3:10 p.m.

25 Before:

16 HON. LOUIS L. STANTON,

17 District Judge

18 APPEARANCES

19 ARENSON, DITTMAR & KARBAN
20 Attorneys for Plaintiffs
21 BY: LAURA E. LONGOBARDI, ESQ.
22 STEVEN ARENSON, ESQ.

23 LAW OFFICES OF LOUIS J. MAIONE
24 Attorneys for Defendants
25 BY: LOUIS J. MAIONE, ESQ.

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1 (In the robing room)

2 THE COURT: What happened at the bankruptcy meeting?

3 MR. MAIONE: What meeting?

4 THE COURT: What do I mean?

5 MR. MAIONE: What meeting? I didn't know there was a
6 meeting. There hasn't been a bankruptcy meeting in a while.
7 There will be one coming up on April 14th.

8 THE COURT: Oh, April 14th. I thought it was
9 March 14th.

10 MR. MAIONE: No. It's a hearing to confirm the fees
11 owed to all of the attorneys and accountants and attorneys for
12 the creditors committee, etc., and I think that the law, your
13 Honor, is that if nobody contests anybody else's fees, within
14 21 days of their submission, which would make that the 26th,
15 then they're automatically to be paid, but Judge Steckroth,
16 maybe in a, you know, an attempt to be prudent, because he just
17 took the case over, is having a hearing, although it says that
18 nobody need attend, although I'm attending. So the 14th, I
19 imagine everybody's application will be approved.

20 THE COURT: Well, you thought they might also convert
21 it to a Chapter 7.

22 MR. MAIONE: I don't think that there's going to be
23 much of a choice. It appears --

24 THE COURT: What difference does it make for a single
25 creditor? There's only one creditor, isn't there, in that

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1 bankruptcy?

2 MS. LONGOBARDI: One group of creditors; namely, the
3 plaintiffs.

4 THE COURT: Well, this case.

5 MR. MAIONE: Yeah, yeah.

6 THE COURT: Yes.

7 MR. MAIONE: What it means is that someone will be
8 appointed. If he's converted, they will put in an examiner and
9 that examiner or -- not trustee but an examiner will oversee
10 his business and be able to make payments on behalf of those
11 debtors in possession. That's what I tried to point out in my
12 letters, Judge. You know, even if you didn't let me out of
13 this case, I need money to pay for experts, etc. He's not even
14 paying that. So until the judge says -- Judge Steckroth says,
15 listen, you got to pay these people money and he says, I can't
16 pay them money, I don't see that the court has much of a choice
17 but to *sua sponte* convert him, and if that doesn't happen,
18 somebody else is going to make a motion, you know, one of the
19 attorneys for the creditors committee. I don't even know who
20 they are. Ms. Longobardi knows them. But attorneys for the
21 creditors, attorneys --

22 THE COURT: But that's all going to wait for
23 April 14th.

24 MR. MAIONE: There's nothing I can do about that, your
25 Honor. I wish there were. You know, I was actually hoping

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1 that he'd be available to come in today, but I tried to -- I
2 reached out to him but I did not hear from him. Because I
3 thought, you know, perhaps your speaking to him might resonate
4 to some extent. But I haven't spoken to him now since the
5 Thursday before last. We were supposed to have a meeting, all
6 the attorneys, and he was supposed to show up, and he --

7 THE COURT: This is who you're talking about now?

8 MR. MAIONE: Vazquez, Vazquez, the defendant, José
9 Vazquez. I was hoping he'd be here today. 'Cause he's really,
10 you know, the person to speak to. He runs all the
11 corporations, but -- they're all his corporations. But I was
12 unable to reach him. And as I said in my letter, I have these
13 other fellows to defend who I can't even speak to. They don't
14 speak a word of English. I actually hand delivered letters to
15 both of those fellows, which I had translated by a translator
16 into Spanish, and I hand delivered it to them to tell them that
17 we had to meet and we had to be prepared for their depositions.
18 Ms. Longobardi had noticed them up. And as I said, I couldn't
19 even have a conversation with them on the car wash lots. I
20 just gave it to them. They knew who I was because they'd met
21 me a few times, and that's why I had the letters translated
22 into Spanish. But for me to sit down with them now, I need a
23 translator. I couldn't sit down for six or seven hours and
24 prepare the two of them for deposition without a translator,
25 and I'd have to pay for a translator at their depositions. And

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1 I'm not in a position to do that any longer. I've got \$11,000
2 worth of bills on my desk.

3 So something's going to happen on the 14th. I mean,
4 I can't see that the trustee won't move to convert them or the
5 court will do it *sua sponte*. If that happens, then
6 somebody's -- whoever's in charge, the examiner or the trustee,
7 is going to advance at least fees to pay for expenses going
8 forward so that we can get the expert and we can -- I can
9 prepare these two fellows for depositions, and if I had to go
10 forward because the court won't let me out, you know, my fees
11 will get paid some day, like everybody else's will.

12 THE COURT: What's the point of going ahead with
13 Vazquez's deposition if he isn't going to answer any questions
14 between now and trial?

15 MR. MAIONE: Well, he said he was. That was the point
16 of the meeting that --

17 THE COURT: You said that he wasn't many, many times.

18 MR. MAIONE: Yeah, and then we had a meeting with him.
19 Four lawyers. It was me, two fellows from the bankruptcy firm,
20 and his individual attorney who is representing him in the
21 bankruptcy, and we --

22 THE COURT: That's Mr. Ferro?

23 MR. MAIONE: Yes, Ralph Ferro. And we explained to
24 him, and he said yes, he would testify. And so thereafter he
25 was forced to appear last Tuesday and testify, and he doesn't

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1 show up. And I couldn't reach him. I called him three or four
2 times. You know, I know Ms. Longobardi is frustrated, but so
3 am I. I could not reach him. I tried him the night before. I
4 called him three or four times that day while we were sitting
5 there, and then I got that e-mail from Mr. Ferro that said that
6 he was stressed out and overwhelmed, and as I said in my
7 letter, I have no knowledge of bipolar disease and whether --
8 how it affects somebody, but I have been around him long enough
9 to know that sometimes he's just on, you know -- in another
10 space.

11 THE COURT: Well, that's a medical term --

12 MR. MAIONE: Yeah, I know.

13 THE COURT: -- that we're all familiar with but we're
14 not all specialists in that field. But you've also heard the
15 legal term "default."

16 MR. MAIONE: Yes, I have.

17 THE COURT: What are your thoughts about that?

18 MR. MAIONE: Well, I think it's a little drastic even
19 at this point. I know he's been very uncooperative, but
20 Mr. Ferro's e-mail to me, which I provided to your Honor -- and
21 I haven't spoken to Ralph since then, I tried to reach him
22 earlier today after I got the call from chambers -- is that
23 he's prepared to sit down and have his deposition completed in
24 10 to 14 days from the date of that e-mail, which was Friday, I
25 believe.

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1 THE COURT: Well, you said he's prepared to sit down
2 and have his deposition completed, but he can't be prepared
3 because of the translation costs involved.

4 MR. MAIONE: No, no, no. Excuse me, your Honor. Not
5 to interrupt you, but --

6 THE COURT: Excuse me?

7 MR. MAIONE: -- he doesn't need a translator.

8 THE COURT: Oh, he doesn't need a translator.

9 MR. MAIONE: No. He speaks English.

10 THE COURT: So he can be prepared on the facts.

11 MR. MAIONE: Oh, yeah.

12 THE COURT: But he hasn't been.

13 MR. MAIONE: Oh, he has been. I've spent a lot of
14 time with him. He's been deposed for three days.

15 THE COURT: So wherever he's sitting down, you don't
16 know where he is and he's not taking any steps to complete his
17 deposition.

18 MR. MAIONE: I understand that, your Honor.

19 THE COURT: So I come back to that old epithet,
20 "default." He's the defendant. You're not the defendant.

21 MR. MAIONE: I understand that, your Honor, but there
22 are four corporate defendants and I don't know whether they can
23 be defaulted. I understand that he's the principal.

24 THE COURT: Well, he was the 30(b) witness.

25 MR. MAIONE: Yes, he was.

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1 THE COURT: They can only appear by counsel and they
2 can only testify by human beings. That's the nature of the
3 corporation.

4 MR. MAIONE: I understand that. And we have the other
5 two fellows to consider who are also defendants.

6 THE COURT: Well, they may have other -- perhaps
7 equitable, perhaps not -- entitlement, some entitlement to
8 separate consideration. Right now I'm talking about Vazquez
9 and the corporation.

10 MR. MAIONE: No, I understand that.

11 THE COURT: The trouble, I gather, with them is that
12 they desperately do need translators and nobody can communicate
13 with them --

14 MR. MAIONE: That's correct.

15 THE COURT: -- without a Spanish interpreter.

16 MR. MAIONE: And as you can appreciate, I would --

17 THE COURT: So they're at the moment factually
18 inaccessible because they need translation and there's no money
19 for a translator.

20 MR. MAIONE: Correct. And I would insist on
21 interviewing them myself as opposed to with Mr. Vazquez's
22 assistance because they're separate defendants.

23 THE COURT: But you can't do anything without being
24 paid, so that stymies too. We have a car but it has no gas and
25 no tires.

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1 MR. MAIONE: Good analogy.

2 THE COURT: So, Ms. Longobardi?

3 MS. LONGOBARDI: Your Honor, default sounds very good
4 to me. Frankly, I came in prepared to ask you for preclusion
5 sanctions, among others at this point. I'm very sympathetic to
6 Mr. Maione. We have had a very good working relationship and I
7 have not intended to convey in my letters that I believe that
8 this is his fault. But that being said, I have clients that I
9 have to protect.

10 THE COURT: To the extent that there was any such
11 implication that could have been drawn, I certainly did not
12 draw it. I think he's acted very well since he came into the
13 case, within the limits available to him.

14 MS. LONGOBARDI: And I concur. But I have 18
15 plaintiffs who, yet again, are asking: When are we going to
16 trial? And I have to explain to them that, yet again, because
17 of Mr. Vazquez's conduct, this matter has now been put over to
18 a --

19 THE COURT: Oh. This is in the complaint column.

20 MS. LONGOBARDI: I'm sorry, your Honor. What do I
21 want? Default sounds great to me. Default sounds great to me.

22 THE COURT: Yes. We're starting at the top.

23 MS. LONGOBARDI: Yes.

24 THE COURT: You may not be able to get there from
25 here. Without any more additions to the present record, I'm

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1 talking really about the evidence in the case that you're
2 familiar with and I'm totally ignorant of, can you put in a
3 case? If we tried it next week, could you put in a case,
4 without getting anything further from anybody?

5 MS. LONGOBARDI: I could put in a case, if no further
6 testimony came in from any other defendant, because I don't
7 want to be surprised with anything else.

8 THE COURT: No. Let's play hardball here for a
9 minute.

10 MS. LONGOBARDI: Sure.

11 THE COURT: When I ask a question at the present part
12 of this conversation, I really want an answer to that question.

13 MS. LONGOBARDI: Yes.

14 THE COURT: And not a lot of "if" and "but" and
15 "however" and "on the other hand" or anything. I just want:
16 Can you put in a case?

17 MS. LONGOBARDI: I could put in my case.

18 THE COURT: That will get to a jury.

19 MS. LONGOBARDI: Yes.

20 THE COURT: Well, that's important. I think probably
21 under the law you'd have to do that in an inquest, if I granted
22 it, but you say you could do that.

23 MS. LONGOBARDI: I can do that.

24 THE COURT: This sounds silly, but I think
25 conceptually it's a fairer question than it sounds. Then how

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1 are you being prejudiced by not being able to get further
2 evidence from the defendants?

3 MS. LONGOBARDI: I can put on my *prima facie* case
4 based on my own plaintiffs' testimony.

5 THE COURT: And records that you've got.

6 MS. LONGOBARDI: And what records I have from my
7 people. Based on the records that I've been given by the
8 defendant, which are largely the payroll tax returns for the
9 relevant period, which I have not had an opportunity to
10 question him about -- I am getting there. I am getting there.
11 Give me a little leeway.

12 THE COURT: I don't want "I'm getting there." Leap to
13 the point and then stop.

14 MS. LONGOBARDI: I would need to be able to discount
15 or discredit his documentary evidence in order to combat any
16 defense that he might raise.

17 MR. ARENSEN: Your Honor, may I? Maybe six months ago
18 or eight months ago we were prepared to go to trial without
19 deposition. That changed, and now there's been testimony by
20 Mr. Vazquez where he pointed to other people as having primary
21 responsibility for managing the employees. He's also,
22 subsequent to those three days of evasive testimony, with
23 litanies of "I don't know" and "I don't recall," he made a
24 major production of two boxes of documents, with documents for
25 the relevant period, which do give him some basis to present

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1 some theory of defense. We've had no opportunity to test him
2 on those --

3 THE COURT: What's the theory?

4 MR. ARENSON: The theory is that those payroll
5 documents show some employees and they're not the plaintiffs.
6 Now we have our --

7 THE COURT: Show some employees. You mean some
8 employees who were getting paid.

9 MR. ARENSON: Yes, that's right, that's right. And
10 he's also articulated --

11 THE COURT: But you say they're nonplaintiffs.

12 MR. ARENSON: They're nonplaintiffs, that's right.
13 That's right.

14 THE COURT: Well, that would perhaps go to the class
15 aspect.

16 MR. ARENSON: It would also go to -- his theory of
17 defense was: All my employees -- I report my employees. I
18 report -- all my employees appear on my quarterly tax returns.
19 Here they are.

20 THE COURT: Ergo, the plaintiffs weren't employees,
21 his fundamental position since day one.

22 MR. ARENSON: That's right, and we haven't -- and we
23 wanted those documents. They weren't produced until after the
24 first three days of evasive testimony, and after we got them
25 and we were prepared to question him about them, he saw all the

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1 documents laid out on the table and he said, "I'm not answering
2 any questions until the day of trial." That was
3 February 27th. And then we called you and you said, "Well,
4 make your motion. Make your record, clarify all the areas he's
5 refusing to testify about, and make your motion." We left it
6 there on the 27th, and the 28th we were informed that his
7 lawyer had persuaded him to change his position and now to
8 continue with the deposition.

9 THE COURT: I think you did a pretty thorough job
10 after that point.

11 MR. ARENSON: And then we were all set up for
12 March 11th to continue with his deposition and finally get an
13 opportunity to question him on, finally, the documents, the
14 documents produced finally for the period, for the germane
15 period about -- that have some relevance to the case, and he
16 doesn't show up.

17 So yes, if we were back where we were six or eight
18 months ago where we were going with no depositions and in
19 effect the position we would have argued *in limine* is if -- no
20 documents can be offered at trial if they haven't been produced
21 previously -- we could have tried the case. Now, well, we feel
22 strongly about our case and the credibility of the plaintiffs,
23 all of whom were deposed, I note, and all of whom --
24 Mr. Vazquez sat through four days of 18 -- of 16 --

25 THE COURT: I really --

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1 MR. ARENSEN: -- don't want anything else.

2 THE COURT: You know, rhetoric confuses me. Come to a
3 point when I want facts.

4 MR. ARENSEN: Forgive me. In any event, but now where
5 there's been an introduction of documents, if he can use those
6 documents, and we haven't had a chance to question him on it,
7 there's a prejudice to us. There's a difficulty.

8 THE COURT: That answers the question. He's got
9 documents from which he says it can be inferred that these
10 plaintiffs were not employees.

11 MS. LONGOBARDI: Yes.

12 THE COURT: And he asks for that inference to be drawn
13 in his favor.

14 MS. LONGOBARDI: That would be the supposition, yes.

15 THE COURT: Hmm?

16 MS. LONGOBARDI: That would be the supposition, yes.

17 MR. ARENSEN: Granted we've never heard that --

18 THE COURT: So under those circumstances what do you
19 want to do?

20 MR. ARENSEN: Well, what we would like to do is, one,
21 we feel that he's exhausted --

22 THE COURT: No.

23 MR. ARENSEN: What we'd like to do is have him
24 precluded from testifying.

25 THE COURT: Have him?

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1 MR. ARENSEN: Precluded from testifying at trial.

2 MS. LONGOBARDI: And precluded from using the
3 documents.

4 THE COURT: And precluded from?

5 MS. LONGOBARDI: Using these documents against the
6 plaintiff.

7 THE COURT: Why should he be precluded from using
8 documents he's produced?

9 MR. ARENSEN: Because he prevented us from questioning
10 about it. He won't appear at a deposition.

11 THE COURT: They're not subject to cross; the
12 documents, that is to say.

13 MR. ARENSEN: Yes, yes.

14 THE COURT: This is a jury trial.

15 MR. ARENSEN: Yes, your Honor.

16 THE COURT: That's basically their case for
17 preclusion.

18 MR. MAIONE: I understand that. They seem to be
19 making a case to continue his deposition, which is why I said
20 earlier on -- I know I was a little confusing, but that's why I
21 was hoping he was here today. I thought perhaps you could kind
22 of read him the riot act and tell him if he doesn't have his
23 deposition taken on such-and-such a day, he's going to be
24 defaulted or precluded. But I think they're making an argument
25 that they need to finish his deposition.

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1 MR. ARENSEN: No. We're saying, that's history.

2 MR. MAIONE: Let me finish. Okay. I don't think
3 they're entitled to a default given the fact that he says
4 he's -- through his personal bankruptcy attorney that he's
5 prepared to have his deposition taken, and I don't think you
6 can preclude the use of those documents at trial. He's
7 provided them already. He's testified for three days about
8 many of them. The two other defendants, Mr. Vargas and
9 Mr. Jimenez, will rely on those documents to a certain extent.
10 I don't know that they can be precluded from being introduced
11 into evidence.

12 THE COURT: That they can be precluded. I thought we
13 were not considering them for the moment.

14 MR. MAIONE: No, I mean, the documents. I don't think
15 those documents can be --

16 MR. ARENSEN: I want to be clear about one thing.
17 Those documents I'm talking about --

18 THE COURT: Your dilemma is that you're arguing that
19 he should be given a chance to complete his deposition when you
20 can't produce him to complete his deposition.

21 MR. MAIONE: Well, I don't know that that's the case,
22 your Honor, given --

23 THE COURT: Sitting here today, it's pretty close to
24 the case, isn't it?

25 MR. MAIONE: Yeah, yeah, it is pretty close.

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1 THE COURT: You're hoping for better weather tomorrow.

2 MR. MAIONE: And as you know, I would like to be out
3 of this case because I'm not getting paid, but I think he
4 deserves one last shot, if you will. You know, his lawyer,
5 Mr. Ferro, represented that he's going to have his deposition
6 taken in 10 to 14 days and, you know, if he doesn't and I can,
7 you know -- I'm sure the court can fashion a remedy for the
8 plaintiff, but --

9 THE COURT: You are?

10 MR. MAIONE: Yes, that they want, that they're happy
11 about. I think he's -- as I said, I think he deserves one last
12 chance at having his deposition taken. He has been deposed for
13 three full days, your Honor. It's not that he's avoided this,
14 at least since I've been in the case, and Mr. Ferro's proffer
15 was that he was upset mentally, stressed out, and I had seen
16 that personally, I've seen that before, so, you know, I don't
17 think it's some kind of story coming from Mr. Vazquez. I think
18 he was probably upset about a host of things, but if Mr. Ferro
19 says he's going to be available in 10 to 14 days --

20 THE COURT: What?

21 MR. MAIONE: Mr. Ferro says that Mr. Vazquez will be
22 available for his deposition 10 to 14 days from the date of
23 that e-mail, so --

24 THE COURT: Well, that's not only hearsay, it's almost
25 incomprehensible. How does Mr. Ferro know that it will take

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1 him 10 to 14 days to be ready?

2 MR. MAIONE: He had a meeting with him.

3 THE COURT: And a meeting with Mr. Vazquez yields no
4 useful, reliable information, as we all know.

5 MR. MAIONE: I understand that, your Honor. And
6 that's all I can go on because I haven't spoken to him.

7 THE COURT: How far do you think you can stretch out
8 Mr. Maione without getting paid?

9 MR. ARENSEN: I wish Mr. Vazquez would use the money,
10 which I believe is accessible to him, to pay Mr. Maione. I
11 believe there is -- the businesses are operating and the
12 reports he's producing to the bankruptcy court show little, if
13 any, income, and I guess we have to live with those reports for
14 now, but there are four going concerns with hundreds of cars
15 coming in every day.

16 THE COURT: Really?

17 MR. ARENSEN: Well, based upon what our clients have
18 told us is the history of these businesses, there's an average
19 of 500 cars a day when it's not busy. But we don't -- we're
20 against the idea, obviously, of Mr. Vazquez not paying for
21 Mr. Maione's time, but it seems like that's a choice that
22 Mr. Vazquez is making. And if he's choosing to not pay his
23 lawyer and in effect shut down his representation, that's his
24 choice, and I think the consequences flow from that choice.

25 MR. MAIONE: Your Honor, may I respond to that?

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1 THE COURT: Yes.

2 MR. MAIONE: He doesn't have any choice now. It's got
3 to be approved by the bankruptcy court that he pay all the
4 administrative fees, include his attorney's fees. Concededly,
5 he has told me, he's not going to be able to pay those fees,
6 which brings us back to that same point again. I believe that
7 Judge Steckroth is going to be faced with the dilemma of what
8 do I do with these four debtors in possession other than
9 convert them because he's saying he's not going to pay what
10 I've already ordered he's got to pay. So if the US trustee
11 doesn't convert him --

12 THE COURT: What order? There's an order --

13 MR. MAIONE: There will be an order on the 14th that
14 he has to pay because once all these applications are in and as
15 I said earlier, they have -- everybody has 21 days to object to
16 somebody else's submissions.

17 THE COURT: Well, who are these other people? There's
18 only one claimant here, isn't there, these bunch of plaintiffs?

19 MR. MAIONE: No, I'm talking about the attorneys, the
20 attorneys for the creditors committee, the attorneys for the
21 accountants, the accountants -- everybody has put in
22 applications for fees. He's got to pay all those fees. He
23 can't because he's bankrupt. He's in a bankruptcy court. He
24 can't until the period runs 21 days. And at the confirmation
25 hearing Judge Steckroth says, okay, these are the fees you have

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1 to pay. At that point if he suggests or says, I can't or won't
2 pay these fees, I don't think there's any choice but that Judge
3 Steckroth has to *sua sponte* convert him or the US trustee is
4 going to say, we're going to have to convert them to a 7, all
5 of them.

6 THE COURT: And then what happens?

7 MR. MAIONE: And then they put in an examiner and the
8 examiner runs the business and pays ongoing expenses, including
9 what I would need to hire the expert and to hire the
10 translators, etc. We wouldn't get paid immediately. I would
11 like to get paid immediately, or within 30 days of my bills.
12 But if I get paid next year, I get paid next year.

13 THE COURT: Why aren't you making an application to --

14 MR. MAIONE: I did. I have. Mine's the biggest
15 application.

16 THE COURT: To convert it?

17 MR. MAIONE: Oh, to convert it? No, I don't think
18 ethically I can do that. I don't think I can move to convert
19 him so that I can get paid. I don't think I can do that, your
20 Honor.

21 THE COURT: But doesn't it become more in the
22 interests of the bankrupts to do that at some point?

23 MR. MAIONE: I would think --

24 MS. LONGOBARDI: I don't believe, your Honor, that
25 having voluntarily filed for Chapter 7 -- Chapter 11 the

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1 debtors themselves can move to convert their own cases to a
2 Chapter 7 liquidation. I believe procedurally right now where
3 the bankruptcy cases are is that they've been jointly
4 administered, and at the present time -- there are separate --

5 THE COURT: It's a debtor in possession.

6 MS. LONGOBARDI: They're all separate, they're all
7 debtors in possession. They're being administered as a single
8 group of cases for administrative convenience. At the present
9 time these are all interim fee applications that have been
10 submitted by the administrative professionals, which are
11 Mr. Maione; Mr. Ferro, bankruptcy counsel for Mr. Vazquez; the
12 DeCotas (ph) law firm as bankruptcy counsel for the four car
13 wash defendants; I believe Citrin Cooperman, who were the
14 accountants for the debtors, have submitted an interim fee
15 application; and Klestadt & Winters, who are the attorneys for
16 the creditors committee, have submitted interim fee
17 applications. And all of those are supposed to be heard on the
18 14th. Whether or not Judge Steckroth is going to --

19 THE COURT: Who are the creditors other than the
20 professional --

21 MS. LONGOBARDI: For plaintiffs? Who are the only --
22 general unsecured creditors; the administrative professionals
23 are all the administrative creditors; the IRS, which is its own
24 creditor, has I think filed two relatively small claims, I
25 think along the lines of about a thousand dollars. For the

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1 IRS, that's relatively small. But otherwise there are no
2 creditors, and there are certainly no other general unsecured
3 creditors other than my plaintiffs. Nevertheless, the US
4 trustee recommended and the bankruptcy court did appoint an
5 official committee of unsecured -- general unsecured creditors.

6 THE COURT: Which is simply the creditors --

7 MS. LONGOBARDI: The creditors committee.

8 MR. ARENSEN: For the plaintiffs.

9 MS. LONGOBARDI: Well, they're on the committee. If
10 any other general unsecured creditors pop up, they would be in
11 the same situation as the plaintiffs. But right now these are
12 all interim fee applications. I don't know if Judge Steckroth
13 will *sua sponte* convert this to a Chapter 7, which at that
14 point will turn this into a liquidation. The Chapter 7 trustee
15 would have to be appointed to take control -- they would no
16 longer be debtors in possession -- and proceed with a
17 liquidation of the assets. How long that would take, it's not
18 going to happen overnight. Nonetheless, all that should not be
19 impacting what happens in this case. In fact, what Judge
20 Steckroth made very clear when he lifted the stay is that
21 whatever happens in the bankruptcies should not be affecting
22 this case.

23 THE COURT: Well, that's right. The merits of the one
24 should not affect the merits of the other. The trouble is that
25 the flow of money to finance this case is tied up in the

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1 bankruptcy proceeding, and that's a disreputable fact.

2 MS. LONGOBARDI: It is, but even if a Chapter 7
3 liquidation were ordered *sua sponte* on the 14th, that still
4 wouldn't result in cash entering into anyone's pocket for a
5 while.

6 THE COURT: Well, I think this case is becoming the
7 victim of incentives which have become reversed, or perhaps
8 taken a position where they ought to be reversed. Up until now
9 Mr. Vazquez has had a motive to delay and defer and frustrate
10 the prosecution of this case. That's basically only an
11 elaboration on individualized evidence of the incentive of
12 every defendant to delay the case, because in the meantime the
13 plaintiffs have the claim and he has the money. And the courts
14 are well familiar with that incentive. But here it's becoming
15 quite acute, and his behavior is entirely consistent with that
16 incentive. Now don't misunderstand me. I'm not saying it's
17 entirely due to that incentive. I'm merely saying it's
18 consistent with it. His behavior may have other causes,
19 legitimate or medical or whatever, but the net is still that
20 that behavior is consistent with that incentive and it makes me
21 wonder, and I'm really floundering and looking for your
22 assistance.

23 Supposing that incentive were reversed. Anybody
24 familiar with default knows that what usually happens when
25 there's a default is that it is later set aside on the

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1 application of the person against whom it was entered and a
2 showing that the circumstances have changed and that in the
3 interests of justice, the default should be vacated and
4 proceedings allowed to resume. And thinking only of the
5 structure of what I'm hearing, that occurs to me as maybe a
6 step that would help clarify the situation. Mr. Vazquez's
7 history so far in this litigation is only performance under the
8 threat of imminent imposition of something worse. Perfectly
9 understandable, but it's not our duty to encourage it. That's
10 what makes the concept of default look attractive here.

11 MR. MAIONE: I understand that, your Honor, but as I
12 said earlier --

13 THE COURT: Excuse me?

14 MR. MAIONE: I said I understand that, but as I said
15 earlier, I do not know the reason why he didn't show up last
16 week.

17 THE COURT: Exactly. But you have to objectively
18 recognize that he has an incentive not to show up and he's
19 expressed deep reluctance to testify, and then you say, when we
20 talk to him, we point out the foolishness of that and the need
21 to cooperate and then he says he'll cooperate and vanishes. To
22 my mind that is a behavior consistent with what I've been
23 describing. It would immediately raise the question of the
24 extent of any default because there's the other two defendants.
25 They have a right to a trial, they have a right to fair

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1 treatment, and we'd have to see what they said. And to close
2 the circle, that comes back to translations, money, time,
3 money.

4 MR. MAIONE: Right.

5 THE COURT: So it's not a perfect world. But it's the
6 world we're laboring in. It's not something to be done
7 lightly.

8 Are you going to be able to get from the remaining two
9 defendants anything worth getting, in light of what evidence
10 you have and what arguments you think can be made and the
11 degree of their implication in the case? It is a premature
12 question, probably.

13 MS. LONGOBARDI: I think that's a little premature.

14 THE COURT: You've probably deferred thinking about
15 it.

16 MR. ARENSON: We don't know what they're going to say
17 and I would be reluctant to go to trial with having these
18 on-site managers who Mr. Vazquez has said have primary
19 responsibility for managing these employees not knowing what
20 they're going to say, and I believe --

21 THE COURT: I thought I saw in one of the letters that
22 the depositions of the plaintiffs had been completed.

23 MR. ARENSON: Yes, but I'm saying these two
24 defendants, these other defendants --

25 THE COURT: Oh, I see. All the plaintiffs have

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1 been --

2 MR. ARENSON: Yes.

3 THE COURT: These two defendants have never been
4 examined.

5 MR. ARENSON: No.

6 THE COURT: Why not?

7 MR. ARENSON: Because they haven't been able to --
8 they haven't paid for their own translators as defendants and
9 Mr. Maione has told us he can't communicate with them. He
10 can't prepare them for deposition.

11 THE COURT: Because of the language problem.

12 MR. ARENSON: Right.

13 THE COURT: That's what he's told you, anyway.

14 MR. ARENSON: Right. And they're employed by these
15 car washes. They receive salaries. They're defendants. I
16 don't see why they can't pay for their own translators, if they
17 want to. I mean, if they believe -- if they want -- if they
18 don't want to appear and be deposed, then that's, again, a
19 choice they're making.

20 THE COURT: Have they been served with notices?

21 MR. ARENSON: Absolutely.

22 THE COURT: Probably years ago.

23 MR. ARENSON: Yes.

24 THE COURT: You could put in a case against them?

25 It's a question. Can you put in a case against them?

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1 MS. LONGOBARDI: I could put in a case against them,
2 again, based on my own plaintiffs' testimony.

3 THE COURT: What's their position in the
4 establishment?

5 MS. LONGOBARDI: Well, according to plaintiff --

6 THE COURT: Why are they defendants? Who are they?

7 MS. LONGOBARDI: They are -- according to the
8 plaintiffs, they were the managers of two of the four --

9 THE COURT: Oh, I see.

10 MS. LONGOBARDI: -- car washes. According to
11 Mr. Vazquez, they each --

12 THE COURT: Two separate corporations.

13 MS. LONGOBARDI: Yes. According to Mr. Vazquez, each
14 one of the two managed two car washes. So --

15 THE COURT: Between them they manage all four.

16 And what deters you from taking their depositions is
17 the expense of the reporter at the deposition.

18 MS. LONGOBARDI: It's not a deterrent to me. The
19 deterrence is Mr. Maione's ability to produce them --

20 MR. ARENSEN: To communicate with them with
21 translators that have to be paid, and Mr. Maione's position is
22 that he doesn't want to advance money for these translators and
23 that these two managers speak only Spanish. What I was saying
24 is that they're receiving salaries from these ongoing
25 businesses, they're named defendants, they've been served, they

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1 can pay for their own translators.

2 THE COURT: Well, the law doesn't require that they be
3 prepared. The law requires that they appear for the
4 deposition.

5 MR. ARENSEN: And at the deposition we would pay for
6 the translator.

7 THE COURT: Okay.

8 MS. LONGOBARDI: It's not a holdup on our part. It's
9 more of a, when will they be produced.

10 THE COURT: Well, luckily we have Mr. Maione here.

11 MR. MAIONE: Your Honor, I'm not disagreeing with your
12 Honor's statement about --

13 THE COURT: And I say again on behalf of all of us, I
14 think you've behaved very well in one of the most difficult
15 kinds of situations a lawyer can be placed in.

16 MR. MAIONE: I appreciate that.

17 THE COURT: And I recognize you're not supposed to be
18 competing with your banking clients.

19 MR. MAIONE: Right. You know, your Honor, when
20 Mr. Vazquez first filed for bankruptcy protection back in
21 October, I wrote a letter to the court in which one of the
22 things I was concerned about was my representation of these two
23 fellows. I came into this case, as you know, after the fact --

24 THE COURT: Well, it's Mr. Ferro who's representing
25 them, isn't it?

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1 MR. MAIONE: No. Mr. Ferro is just representing
2 Mr. Vazquez. These two fellows are not in the bankruptcy
3 court. And they're employees. They're managers, at least, of
4 two of the car washes. I think they're entitled to the best
5 defense that they can be given, and that means I've got to --

6 THE COURT: In the abstract, of course they have.

7 MR. MAIONE: Yeah, and I've got to sit down and talk
8 to these guys. I'll tell you, your Honor, I've met them two
9 times previously. I'd be surprised if they understand a word
10 of English. So the only way I can prepare them and to properly
11 defend them is if I have a translator to intervene because I
12 can't --

13 THE COURT: But these plaintiffs are not entitled to
14 the benefit of your preparation of your witness. The basic
15 concept of the law is that the preparation of the witness is
16 for the benefit of the witness, and if he forgoes that, his
17 duty is to appear for the examination and answer the questions
18 truthfully when they're put to him.

19 MR. MAIONE: I understand that, your Honor, but
20 haven't really even had the opportunity to have a discussion
21 with them like this.

22 THE COURT: Well, you'd better make one, haven't you?

23 MR. MAIONE: Well, if you're telling me that, yes, I'm
24 going to do that. But as I said, I haven't --

25 THE COURT: No. I'm telling you, I don't care whether

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1 you do it or not. That's between them and you. I'm telling
2 you that the rules of the court are, when noticed duly, they
3 should appear for examination, and there will be an interpreter
4 there, and you will be there to assist them, see that the
5 questioning is proper. Many, many a witness appears in court
6 without the benefit of prior presentation or legal
7 representation, even if they're a defendant in the case. In
8 pro se litigation it happens all the time.

9 MR. MAIONE: I understand that, your Honor, but --

10 THE COURT: We're getting down to the facts of life
11 here.

12 MR. MAIONE: Not to use the word loosely, but by
13 default or otherwise, these guys are my clients and I'm
14 defending them, and I don't feel that I can properly defend
15 them unless I know what their, quote-unquote, story is. I have
16 never had a conversation with them outside of Mr. Vazquez's
17 company in which --

18 THE COURT: But that's for lack of a translator.

19 MR. MAIONE: Yes.

20 THE COURT: This is what drives us back to the time to
21 free up money that all of you seem to think is going to be
22 sufficient in the bankruptcy court.

23 MR. ARENSEN: But your Honor, respectfully, I don't
24 think that the expense of translators should be an issue with
25 these two defendants. They're employed. They could hire their

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1 own translators. They can even produce a friend, a child,
2 someone they know to be -- certainly for preparation. We're
3 going to pay for the translator at deposition. But for
4 purposes of Mr. Maione meeting with them, I mean, it's not very
5 difficult to get someone who can speak both Spanish and
6 English. Even a relative, etc. I don't think that that cost,
7 whether it's \$3,000 or something like that, should now be a
8 sticking point in terms of going forward with their deposition.
9 And the choice should be put to them. They're named
10 defendants.

11 THE COURT: Well, I think all of those things should
12 be entirely left to them and Mr. Maione, and I think we've
13 reached a point where you have the right to take their
14 deposition unless there's some legal grounds for objection.
15 Then we'll know.

16 Well, you wanted a conference with me, and I think
17 I've exhausted my thinking on this for the moment and that I
18 can tell you, frankly, it's thinking that emerged during this
19 conversation, not in advance of it, so it's simply a reaction
20 to what I'm hearing, and I think I should leave it at that. I
21 suspect that it, except for the last page of Ms. Longobardi's
22 letter, represents a somewhat new way of thinking about the
23 case, and I should leave it to you jointly and separately to
24 consider and maybe come back with your best joint suggestions
25 about how to handle the case, or handle the difficulties that

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1 we're all facing in the case. I don't want to impose any order
2 today. All of this is too fresh. But it's my current thinking
3 about the deeper realities in this situation that I think you
4 ought to be guided by, starting with the reversal of
5 Mr. Vazquez's incentives and proceeding through the duty of the
6 defendants to give depositions when duly called for.

7 And I think maybe there's one other thing that's fair
8 to say. In view, Ms. Longobardi, of the unusually high factor
9 of importance of expense and time actually getting in the way
10 of the feasibility of things getting done in this case, which
11 we all I think would recognize are extreme, maybe your normal
12 procedure of tiny questions, bite by bite, sealing every hole,
13 which do seem to consume a lot of time and therefore the
14 reporter's time, translator's time, all of those consequences,
15 should be accelerated and made more conclusory, particularly
16 when you're going to be dealing with witnesses with a real
17 language problem.

18 MS. LONGOBARDI: I understand that.

19 THE COURT: It's just an accommodation. Your usual
20 procedure is effective and deadly and perfectly proper. I'm
21 not criticizing it. But it is also tedious and maybe
22 unnecessarily minute.

23 MS. LONGOBARDI: The only thing I will say, your
24 Honor, is that the translator time and the court reporter time
25 is my expense.

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1 THE COURT: Lawyer's time.

2 MS. LONGOBARDI: Well, most of it would be at the
3 plaintiff's expense at that point. It's the plaintiff's
4 deposition. But -- I'll certainly be guided by your comments.

5 THE COURT: I think you can do it without running an
6 excessive risk of there being a hole in the record if you go to
7 more conclusory statements. The witness is just as bad at
8 bottom. If I may say so, I think your process is abnormally
9 meticulous in the general rule of federal litigation and yet
10 there seem to be acceptable results in most of the other cases.
11 Okay. With a good deal of humility, I make that suggestion,
12 particularly where you may be dealing with a person of limited
13 intellectual resources and energy resources. And a jury. Some
14 day you're going to have to drag the jury through these
15 questions. I think then you'll want to summarize them.

16 So, okay. Enough on that.

17 MR. ARENSON: One other point. We have an
18 April 25th deadline to have our plaintiffs' pretrial
19 submissions to the defendant and then everything comes back to
20 your Honor by May 21, with a pretrial conference May 23rd.
21 The internal idea was to complete all depositions by the 28th
22 of this month.

23 THE COURT: Good luck. I think you should keep that.

24 MR. ARENSON: Yes.

25 THE COURT: I think this needs attention, and the kind

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1 of remedies I've been talking about are heroic. You don't do
2 this in normal civil litigation. It's not necessary.

3 MS. LONGOBARDI: There's been nothing normal about
4 this case.

5 THE COURT: Excuse me?

6 MS. LONGOBARDI: There's been nothing normal about
7 this case.

8 MR. ARENSEN: But I was trying to think along those
9 lines. In a normal simple case, where goods are sold and
10 delivered and payment is not made by a defendant and a
11 defendant just decides, I'm not going to show up --

12 THE COURT: I'm going to ignore it.

13 MR. ARENSEN: -- I'm going to ignore it and I'm not
14 going to pay the lawyer, what are the consequences?

15 THE COURT: Well, you attach. When you get your
16 judgment by default, you attach.

17 MR. ARENSEN: Right. And I think that that example,
18 that analogy I think does provide some guidance here.

19 THE COURT: It provides some guidance, but reasoning
20 or acting by analogy is one of the most dangerous things that
21 can be done in litigation, because the analogies are close
22 enough to be seductive, but the errors and differences in them
23 are, while concealed, very dangerous. The best thing is, deal
24 with this case as this case, and in this case, you have a man
25 who has a marked pattern of, in effect, default and

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1 reappearance, default and reappearance. And so that is what
2 drives me to the bold suspicion that the best way of getting
3 the case towards trial is to say default and application for
4 vacation of default because now I am getting hurt by my
5 defaults and I want to stop them. That's really all that I'm
6 adding is that concept, and I have it only as a concept because
7 we're all trying to do the best we can. But I suspect that
8 it's the kind of realism that it's the lawyer's duty to convey
9 to his client.

10 MR. MAIONE: Yes, your Honor.

11 MS. LONGOBARDI: You indicated that we should, among
12 counsel, have a discussion as to how we're going to proceed,
13 and I'm sure we're going to go and do that as soon as possible.
14 If we come up with a set plan, should we then be submitting
15 that to your Honor to be so ordered?

16 THE COURT: How can I tell you that? That's something
17 for the lawyers to decide.

18 MS. LONGOBARDI: No. Given everything that we've just
19 been discussing.

20 THE COURT: Yes, of course.

21 MS. LONGOBARDI: All right.

22 THE COURT: If one, then the other, yes.

23 MS. LONGOBARDI: All right.

24 THE COURT: Of course. That's what I'm here for.

25 MS. LONGOBARDI: Okay.

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1 MR. ARENSEN: Your Honor, I have to ask: And if
2 there's a breakdown, we had made a request to make a motion.
3 We put in our letter request to make a motion.

4 THE COURT: I haven't ruled on it. I have the papers
5 here.

6 MS. LONGOBARDI: I've been asking for permission to
7 make the motion. I hadn't actually intended for you to
8 consider the letter as a motion, even though the motion would
9 be an elaboration of what's in the letter.

10 THE COURT: I think we've taken enough bold steps
11 forward for this afternoon. As a friend of mine said: If this
12 table had wings, could we fly it?

13 I'll be here.

14 MR. MAIONE: Thank you, your Honor.

15 MS. LONGOBARDI: Thank you, your Honor.

16 MR. ARENSEN: Thank you, your Honor.

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